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**MAR 17 2008**

In re Application of :  
Lerner, et al. :  
Application No. 10/678,964 : ON PETITION  
Filed: October 2, 2003 :  
Attorney Docket No. IMMAST.013CP2 :

**OFFICE OF PETITIONS**

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed January 9, 2007.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is granted.

A review of the application history reveals that on December 29, 2003, a Notice to Missing Parts of Nonprovisional Application was mailed requiring payment of the filing fee, claims fees, and an executed oath or declaration. On May 18, 2004, applicant a processing and retention fee and requested an extension of time within the third month. On July 1, 2004, a Notice of Incomplete Reply was mailed requiring a proper declaration. Applicant responded on June 21, 2004, by filing a communication reiterating that a processing and retention fee had been paid to maintain co-pendency for filing a continuation application. On December 8, 2006, a Notice of Abandonment was mailed indicating that the application is abandoned for failure to file a timely response to the Notice to File Missing Parts of Nonprovisional Application and that the processing and retention fee practice had been eliminated.

The instant petition was filed on January 9, 2007. Petitioner maintains that the holding of abandonment was improper because the processing and retention fee practice was not eliminated until July 1, 2005, and petitioner paid the processing and retention fee for this application on May 18, 2004.

Based on the aforementioned, it appears that the application was improperly held abandoned as the processing and retention fee practice was still in effect when the petitioner paid the fee on May 18, 2004, and the fee was paid within one year of the submission of the application. The holding of abandonment is withdrawn, accordingly.

The application file is being forwarded to the Office Patent Application Processing for further review in light of the timely and proper payment of the processing and retention fee on May 18, 2004.

Questions regarding this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions